

REMARKS

In the request for continued examination of the present application, pending claims 11-18 are allowed and claims 19-27 stand rejected.

Previously submitted claim 19 was rejected under 35 U.S.C. § 102(b) as being anticipated by Apps et al. (U.S. Patent No. 6,006,677) and Gronnevik (U.S. Patent No. 5,845,588). Previously submitted claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Gronnevik. Previously submitted claims 20, 21, and 23-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gronnevik in view of Ford et al. (U.S. Patent No. 6,228,914).

With respect to the examiner's rejections of claim 19, claim 19 of the instant application interferes with claim 14 of U.S. Patent No. 6,758,148 by Torrey et al. Claim 14 of the Torrey patent was examined and allowed. Accordingly, claim 19 of the instant application should also be allowed.

The relevant statute indicates that a claim that is directed to the same or substantially the same subject matter of a claim in an issued patent may not be made more than one year after the issuance of that patent. 35 U.S.C. § 135(b)(1). The relevant statute also indicates that a claim that is directed to the same or substantially the same subject matter of a claim in a published patent application may not be made more than one year after the publication of that patent application. 35 U.S.C. § 135(b)(2).

Claim 19 of the instant application is an original claim. The Torrey et al. patent issued on July 6, 2004. The application corresponding to the Torrey et al. patent was published on May 1, 2003. Since the instant application was filed on March 11, 2004, an interference must be declared pursuant to 35 U.S.C. § 135(a).

Also, the instant application is a continuation application of U.S. Patent Application No. 09/803,681, which was filed on March 12, 2001, and U.S. Provisional Patent Application No. 60/196,127, which was filed on April 11, 2000. The application corresponding to the Torrey patent was filed on October 26, 2001, so that applicant is the senior party.

The examiner's reliance upon the article entitled "The Synthesis and Characterization of New Thermoplastic Fire Resistant Materials" by McGrath et al. is misplaced. McGrath et al. is directed to two specific classes of engineering resins, poly (arylene sulfide sulfone) homopolymers and aryl phosphine oxide containing comonomers. McGrath et al. does not stand for the general proposition that all thermoplastic materials have fire resistance.

Regarding the examiner's rejection of claims 20-21 and 23-27 over Gronnevik in view of Ford et al., Ford et al. has been reviewed and, as understood, discloses an aqueous intumescent composition that is applied by conventional coating methods, such as spraying, dipping, drawing, and brushing. See Ford et al., col. 12, lines 1-8. Ford et al. does not teach or suggest that

the disclosed intumescent composition can be co-extruded with a polyolefin base material.

Indeed, the fact that the Ford et al. coatings are aqueous coatings indicates that there is no motivation to combine Gronnevik and Ford et al. to produce claims 20-21 and 23-27 because the Ford et al. coatings cannot be co-extruded with polyolefins (i.e. polypropylene, high density polyethylene, and low density polyethylene). Melting temperatures for polyolefins range from 98-175 °C. Modern Plastics Encyclopedia '96 pp. 184-85 and 193. Extrusion temperatures for polyolefins must exceed their melting temperatures. Accordingly, the Ford et al. coatings would evaporate at the extrusion temperatures of the polyolefin materials because the coatings are aqueous (i.e. water based). Consequently, there is no motivation to combine Gronnevik and Ford et al. to produce claims 20-21 and 23-27

Regarding the examiner's rejection of claim 22 over Gronnevik, claim 22 has been amended to include the limitations of claim 20, so that the above reasoning with respect to claims 20-21 and 23-27 applies to claim 22, as well.

Applicant further submits that the instant claims are genus claims to the patentability distinct species claims disclosed in U.S. Patent Application No. 10/890,351 by Abu-Isa et al. Claims 1, 2, 4, 6-9, and 13-16 of Abu-Isa et al. were allowed on October 3, 2006.

The Abu-Isa et al. application was filed on July 13, 2004, so that applicant would have been the senior party in any

interference between the Abu-Isa et al. application and the instant application. However, the Abu-Isa et al. application was expressly abandoned on November 5, 2006.

Small entity status is still proper and desired. Check no. 6943 in the amount of \$395.00 is submitted herewith for payment of the RCE fee and the excess claim fees.

The amendment does not include new matter.

The rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) have been traversed and claims 11-27 are in condition for allowance. Accordingly, in view of the above amendments, explanations, and remarks, reconsideration and allowance of claims 11-27, as amended, is respectfully requested.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

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